



# Overview of Early Transfer Guidance

## What Are the Facts?

To implement Congressionally mandated action, the U.S. Environmental Protection Agency (EPA) has issued guidance on the transfer of federal property contaminated with hazardous wastes, before cleanup completion. This fact sheet explains the early transfer process and EPA's guidance. For a full explanation of acronyms used throughout this document, please refer to the box on page two.

## Who Can Benefit From Early Transfer?

By transferring property that poses no unacceptable risks, EPA helps communities benefit from faster reuse and redevelopment. For example, early transfer allows new businesses to open sooner and generate new employment opportunities. Early transfer also can expedite construction of recreational facilities or community centers. This process not only expedites beneficial reuse projects, but also can result in savings to taxpayers in the long run.

## What Is the Early Transfer Guidance?

The guidance, entitled *EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120 (h)(3)*, was issued on June 16, 1998, in response to a recent change in the Superfund law. In the past, prior to transfer, contaminated federal property had to undergo complete cleanup if hazardous waste was released from, disposed of, or stored on-site for more than one year. Now, property can be transferred prior to cleanup, as long as certain conditions are met. The guidance establishes the process EPA will use to review requests at National Priorities List (NPL) sites for early transfers and to determine, with concurrence from the state governor, if property is suitable for transfer before cleanup completion.

EPA's main function in the early transfer process is to ensure that proposed transfer and land use protects human health and the environment. The federal department or agency transferring the property remains responsible for the cleanup, and the law mandates certain assurances so that cleanup occurs in a timely fashion.



## When Does the Early Transfer Guidance Apply?

EPA's early transfer guidance applies to any federal entity selling or transferring contaminated federal property at NPL sites to non-federal parties. These parties may include developers, local redevelopment authorities, or state or local governments. EPA's guidance covers all "early transfers" by deed under Superfund, including Department of Defense (DoD) installations selected for closure or realignment. The guidance does not apply to uncontaminated property or transfers to federal entities.

The guidance can be used, however, as a model for transferring property for "public benefit"—when a sponsoring federal agency acts as a conduit through which title will ultimately pass from the United States to a public benefit recipient. A Memorandum of Understanding signed by DoD and the federal agencies that sponsor public benefit transfers (dated April 21, 1997) exists for Base Realignment and Closure (BRAC) property.



### Acronyms Explained

**BRAC:** *Base Realignment and Closure*—Refers to obsolete or unnecessary military bases that are being restructured or closed.

**BCT:** *BRAC Cleanup Team*—Comprised of staff from DoD, EPA regions, and the state environmental agency. Promotes cleanup actions that facilitate reuse and redevelopment of closing military bases.

**CERCLA:** *Comprehensive Environmental Response, Compensation, and Liability Act*—The law that gives EPA authority to clean up abandoned or uncontrolled hazardous waste sites, a.k.a. Superfund.

**CDR:** *Covenant Deferral Request* (see box on page 3 for explanation).

**DoD:** *Department of Defense.*

**IAG:** *Interagency Agreement*—A legally enforceable written agreement between EPA and another federal agency to perform cleanup work at an NPL facility.

**NPL:** *National Priorities List*—EPA's list of the nation's most serious uncontrolled or abandoned hazardous waste sites that are being cleaned up under the Superfund program.

**RAB:** *Restoration Advisory Board*—Comprised of representatives from DoD, EPA, the state agency, and the local community, RABs help DoD make informed cleanup decisions at military bases.

**SSAB:** *Site-Specific Advisory Board*—Comprised of representatives from the Department of Energy (DOE), EPA, the state agency, and the local community, SSABs help DOE make informed cleanup decisions at DOE properties.



## What Is a Covenant Deferral Request (CDR)?

Filing a CDR is a key step in the early transfer process. Federal departments or agencies proposing an early transfer must include the following information in the CDR they submit to EPA and other stakeholders:

**Property Description**—a legal description of the property.

**Nature/Extent of Contamination**—includes the degree of uncertainty regarding the nature and extent of contamination, the future land use, who will perform the cleanup work, and existing information on the property.

**Analysis of Intended Future Land Use During the Deferral Period**—includes an analysis of whether the intended land use might result in exposure to CERCLA hazardous substances and a description of response actions that should be taken to prevent exposure.

**Results From a CERCLA Risk Assessment**—an analysis of risks to human health and the environment.

**Response/Corrective Action and Operation and Maintenance Requirements**—includes a projected date by which the cleanup action will be selected and completed and/or demonstrates that a cleanup action is "operating properly and successfully."

**Contents of the Deed/Transfer Agreement**—must include: the public notice; a written warranty that the federal government will conduct any cleanup found to be necessary after the transfer; a clause providing the federal government with access to the property in the future; and response action assurances, which are written provisions that cover property land use restrictions, cleanup schedules, and funding requirements.

**Responsiveness Summary**—the federal agency's responses to written comments received from the public.

**Transferee Response Action Assurances and Agreements**—allow for the transferee to conduct the cleanup with oversight from the federal agency.

## How Does the Early Transfer Process Work?

A federal agency or department proposing an early transfer is required to follow these steps:

- Notify the EPA Regional Administrator (or designee) and the state governor of its intent to request an early transfer.
- Work in partnership with EPA, the state, and the public in the development of the early transfer request.
- Place a public notice in the local newspaper that includes information about the proposed transfer, the new owner and its intended use of the property, CERCLA/Superfund authority to transfer property, the decision-making process, and avenues and timeframes for public comment.
- Draft a Covenant Deferral Request (CDR) (see explanation at left) and make it available to affected stakeholders such as the Restoration Advisory Board (RAB), Site-Specific Advisory Board (SSAB), local governments, and other interested community-based groups. Specific efforts should be made to involve tribes surrounding the property. At base closure sites, EPA anticipates that a base closure team (BCT), including an EPA regional representative, will develop the CDR.
- After the public comment period expires, submit the final CDR to the appropriate EPA regional office and state representative.

## How Does a Property Get Considered for Early Transfer?

To be considered for early transfer, the agency or department transferring the property must demonstrate the following:

- The new owner will use the property in a manner suitable for the site, and the new land use will not pose an unacceptable risk to human health or the environment.
- The deed or agreement contains certain assurances with regard to response actions.
- The federal agency provides public notice on the proposed transfer, allowing the public to provide comments.
- Early transfer will not substantially delay any cleanup actions on the property.

## When Does Early Transfer Occur?

For an NPL site, both EPA and the state governor must concur on the early transfer approval. EPA regional offices will work closely with state officials to review the early transfer request and determine whether the criteria have been met to merit an early transfer. Early transfer cannot occur until the CERCLA guarantee (covenant) is explicitly deferred by EPA and the state, through the early transfer approval process. An Interagency Agreement (IAG) between EPA and the



landholding federal agency is not required but will significantly help EPA make the covenant deferral decision. Once the transfer has occurred and the proposed remedy for the contaminated site is "operating properly and successfully," the transferring agency or department shall provide the new owner with a written guarantee that all necessary response actions have been taken, regardless of whether the cleanup was conducted by the federal government or the new owner.

### For More Information

For more information about Early Transfer Guidance, visit:

<http://www.epa.gov/swerfrr/doc/hkcover.htm>

To learn more about federal facility cleanup and reuse, visit:

<http://www.epa.gov/swerfrr>

Or contact:

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401 M Street, SW. (5101)  
Washington, DC 20460  
Phone: 202 260-2856  
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For guidance issued by DoD on the early transfer of non-NPL sites, visit the BRAC Environmental Cleanup Web Page:

<http://www.dtic.mil:80/envirodod/brac/non-npl.html>

